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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/036,642	12/31/2001	Thomas Edward Mungavan	C27-002-01-US	5809
22854	7590	12/07/2005	EXAMINER	
MOORE, HANSEN & SUMNER, PLLP 225 SOUTH SIXTH ST MINNEAPOLIS, MN 55402			STRANGE, AARON N	
			ART UNIT	PAPER NUMBER
			2153	

DATE MAILED: 12/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/036,642

Applicant(s)

MUNGAVAN ET AL.

Examiner

Aaron Strange

Art Unit

2153

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 September 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. The amendments to claims 4-11 and 14-19 are sufficient to overcome the rejections of those claims presented under 35 USC 112, second paragraph in the Office action of 3/3/2005.

Response to Arguments

2. Applicant's arguments filed 9/8/2005 have been fully considered but they are not persuasive.

3. Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references.

4. With regard to claims 1-6,8-10,12-17 and 19-25, and Applicant's general assertion that Langseth does not anticipate the claimed invention (Page 8 of Remarks), the Examiner respectfully disagrees. As set forth in the Office action of 3/3/05, Langseth discloses a plurality of custom content media programs arranged into discrete products (Col 7, Lines 16-21). Each service that is created is a "discrete product". Langseth further discloses bundling "discrete products" into subscriber specific packages (Col 7,

Lines 33-40). Each subscriber has a specific package of services that they are subscribed to.

With regard to Applicant's assertion that "Langseth does not select discrete products from a plurality of custom content media programs and create a subscriber specific package" (Page 8, Lines 9-10 of Remarks), it is noted that such a limitation does not appear in the rejected claims. Nothing in the claims recites "selecting" discrete products or "creating" subscriber specific packages. The claims merely state that discrete products are "bundled into subscriber specific packages".

5. With regard to claim 7, and Applicant's assertion that retransmitting content which failed to be correctly transmitted would somehow crash the system disclosed by Langseth and or not be useful, the Examiner respectfully disagrees. It is well known in the art that the types of data taught by Langseth (weather, investments, sports, etc) (Col 7, Lines 10-15) are typically transmitted very quickly. Transmission failures for such data types can be detected very quickly, and would be retransmitted almost immediately. Therefore, Applicant's examples of hourly updates being retransmitted 24 hours later, or even near the end of the hour are simply not realistic in the context of Langseth's system. Nonetheless, in the interest of compact prosecution, the Examiner has provided a reference which teaches retransmitting failed transmissions. RFC 2988 teaches retransmission of failed transmissions for TCP (at least Page 1, Section 1). Langseth discloses that FTP may be used to transmit the custom content, and FTP uses TCP for transport.

6. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the addition of the features taught by Levy would have prevented uses of the system taught by Langseth from sharing audio files they have received. Since Langseth charges users for accessing the personalized radio content, it would have been advantageous for them to limit and/or prevent sharing of the received files in order to protect their revenue stream.

7. With regard to claims 11 and 18, and Applicant's assertion that "the files of Levy are meant to be shared" (Page 11, Lines 12-13 of Remarks), the Examiner respectfully disagrees. While some of the files disclosed by Levy are meant to be shared, the files cited in the rejection are not. Levy clearly discloses that the embedded data can be used to specify whether or not the file may be shared (§41). It is apparent that a file marked "no more copy" is not meant to be shared, contrary to Applicant's assertion.

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

9. Claims 1-6,8-10,12-17, and 19-27 are rejected under 35 U.S.C. 102(e) as being anticipated by Langseth et al. (US 6,741,980).

10. With regard to claims 1 and 13, Langseth discloses a distribution system for delivering dynamically assembled media, the distribution system comprising: a plurality of custom content media programs arranged into discrete products (services provide various content from the database) (Col 7, Lines 16-21); an assembler for bundling a predetermined number of the discrete products into subscriber specific packages (subscribers can subscribe to any number of services) (Col 7, Lines 33-40); and, a processor for transmitting the subscriber specific packages in a predetermined order to a subscriber (service delivery may be scheduled) (Col 7, Line 55 to Col 8, Line 13).

11. With regard to claim 2, Langseth further discloses a builder for designing the custom content media programs (services are created) (Col 7, Lines 16-17).

12. With regard to claims 3 and 14, Langseth further discloses that a portion of the custom content media programs comprise dynamic content (live sports scores, stock tickers, specifically created audio content, etc)(Col 8, Line 54 to Col 11, Line 20).

13. With regard to claims 4 and 15, Langseth further discloses that a portion of the custom content media programs is generated dynamically, just prior to transmission (live score alerts and stock tickers are dynamically generated just prior to being transmitted) (Col 8, Line 63 and Col 10, Line 45).

14. With regard to claims 5 and 16, Langseth further discloses that the custom content media programs are encoded and compressed prior to transmission (Real Audio transmissions) (Col 11, Lines 7-12).

15. With regard to claim 6, Langseth further discloses that the system is able to collect and distribute a predetermined number of subscriber specific package transmissions across multiple networked hardware devices (transmissions may be distributed to a plurality of data distribution servers) (Col 15, Lines 35-54).

16. With regard to claims 8 and 17, Langseth further discloses that a portion of the custom content media programs is interactive (links to related content) (Col 22, Lines 36-39).

17. With regard to claim 9, Langseth further discloses that a portion of the custom content media programs is based upon predetermined demographic criteria (preferred music type) (Col 11, Lines 7-12).

18. With regard to claim 10, Langseth further discloses the custom content media programs may be modified based upon feedback from a subscriber (users may modify their profile which would change the provided services) (Col 12, Lines 61-67).

19. With regard to claim 12, Langseth further discloses that a portion of the custom content media programs comprises third party information (subscription interface), and wherein the third party information is used to modify the program to meet a subscriber's changing needs (interface allows information about subscriber to be collected in order to customize the program content)(Col 12, Lines 61-67).

20. With regard to claim 19, Langseth further discloses that the step of creating custom content media programs comprises the step of selecting content that is specific to a subscriber (content may be personalized for subscribers) (Col 7, Lines 37-40).

21. With regard to claim 20, Langseth discloses a method of customizing delivery of dynamically assembled, personalized media to a subscriber, the method comprising the steps of:

- a. creating a plurality of custom content media programs arranged into discrete products (services provide various content from the database) (Col 7, Lines 16-21);
- b. assembling the discrete products into subscriber a specific package (subscribers can subscribe to any number of services) (Col 7, Lines 33-40);
- c. transmitting the package to a subscriber (Col 7, Line 55 to Col 8, Line 13); and
- d. modifying subsequent transmittals (each transmittal will change when real time information such as stock prices and sports scores (Col 8, Line 63 and Col 10, Line 45) is provided or when subscriber modifies their profile) (Col 12, Lines 61-67).

22. With regard to claim 21, Langseth further discloses that the step of modifying subsequent transmittals is based upon subscriber related responses generated by the subscriber (subscribers may modify their profile which would change the provided services) (Col 12, Lines 61-67).

23. With regard to claim 22, Langseth further discloses that the step of modifying subsequent transmittals is based upon subscriber related responses generated by a third party (newly received data will be reflected in subsequent transmittals)(Col 13, Lines 51-65).

24. With regard to claim 23, Langseth further discloses that the step of modifying subsequent transmittals is generated at predetermined intervals (updates may be received after a predetermined interval) (Col 7, Lines 64-66).

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25. With regard to claim 24, Langseth further discloses that the step of modifying subsequent transmittals is based upon archived, personal data (updates in user profiles will be reflected in subsequent transmissions) (Col 12, Line 61 to Col 13, Line 16).

26. With regard to claim 25, Langseth further discloses that the step of assembling the products into a subscriber specific package includes the generation of customized content just prior to the step of transmission (live score alerts and stock tickers are dynamically generated just prior to being transmitted) (Col 8, Line 63 and Col 10, Line 45).

27. With regard to claim 26, Langseth further discloses that the multiple networked hardware devices are from a group comprising: a computer (Col 15, Lines 35-54), a portable mp3 player, a mobile telephone, and a personal digital assistant (PDA).

28. With regard to claim 27, Langseth discloses a distribution system for delivering dynamically assembled media, the distribution system comprising: a plurality of custom content media programs, with each program arranged into a plurality of discrete products (services provide various content from the database and are customized for each user) (Col 7, Lines 16-21); an assembler for bundling a predetermined number of the discrete products into subscriber specific packages (subscribers can subscribe to any number of services) (Col 7, Lines 33-40); and, a processor for transmitting the

subscriber specific packages in a predetermined order to a subscriber (service delivery may be scheduled) (Col 7, Line 55 to Col 8, Line 13).

Claim Rejections - 35 USC § 103

29. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

30. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Langseth et al. (US 6,741,980) in view of Official Notice.

31. With regard to claim 7, while the system disclosed by Langseth shows substantial features of the claimed invention (discussed above), it fails to specifically recite that the system has the ability to analyze feedback and retransmit subscriber specific packages that fail to be transmitted successfully.

The Examiner takes Official Notice that retransmitting data that fails to be transmitted successfully is old and well known in the art. It is well known that computer networks are not 100% reliable, and failed transmissions may occur for a large number of reasons. Monitoring for feedback such as an acknowledgement packet and retransmitting content which fails to be transmitted successfully would be advantageous since it would have ensured delivery of the content to the subscriber. Langseth further

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discloses that FTP may be used to transmit the custom content to subscribers (Col 14, Lines 16-34). FTP uses TCP/IP as a transport protocol, and it is well known that TCP/IP provides retransmission of failed transmissions, as shown by RFC 2988 (At least Page 1, Section 1).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to monitor feedback and retransmit subscriber specific packages that fail to be transmitted successfully. This would have ensured delivery of the content to the subscriber.

32. Claims 11 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Langseth et al. (US 6,741,980) in view of Levy (US 2002/0052885).

33. With regard to claims 11 and 18, while the system disclosed by Langseth shows substantial features of the claimed invention (discussed above), it fails to disclose that a portion of the custom content media programs includes embedded information designed to deter file sharing.

Levy teaches a method of deterring sharing of audio files that are distributed via the Internet. Levy discloses embedding information in the audio files that prevents indicates whether or not the file is allowed to be shared (Par 41). This would have been an advantageous addition to the system disclosed by Langseth, since Langseth discloses the delivering personalized radio content (Langseth, Col 11, Lines

4-21). This would have prevented users of the system from sharing the received audio files with users who had not paid for them.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include embedded information in the audio files distributed by Langseth to deter file sharing. This would have prevented users of the system from sharing the received audio files with users who had not paid for them.

Conclusion

34. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

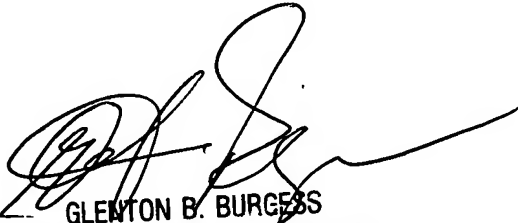
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

35. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Aaron Strange whose telephone number is 571-272-3959. The examiner can normally be reached on M-F 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glen Burgess can be reached on 571-272-3949. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

AS
12/1/2005



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